IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4125 OF 1996

Catalyst (India) Private Ltd. a Company registered under the Indian Companies Act, 1913 with its factory at P.O. Sandoz Baug, Kolshet Road, Thane - 400 607. ..Petitioner

Vs.

1. Banwari alias Banzaru Mukram Rajbhor of Thane, Indian Inhabitant, residing at Satyam Chawl, Azad Nagar, Mashan Wada, Castle Mill, Thane

2. The Honourable Shri S.N. Kamble Presiding Officer, 1st Labour Court at Thane, with his Court and office at Wagle Industrial Estate, Thane. ..Respondents

Mr. C.U. Singh with Mr.Mahesh Londhe i/by Sanjay Udeshi for petitioner.

Mr. V.K. Pradhan for respondent no.1. Respondent No.2 is formal party.

CORAM: B.H. MARLAPALLE, J.

Date : December 19, 2007.

ORAL JUDGMENT:

1. This petition filed by the Company impugns the award passed by the 1st Labour Court at Thane on 30/3/1996 in Reference (IDA) No. 46 of 1987 and

though the petition is claimed to have been filed under Article 226 of the Constitution, having regards to the reliefs sought for, it is being treated as the one filed under Article 227 of the Constitution. Respondent No.2 stands deleted forthwith.

2. The petitioner is a Company incorporated under the Companies Act, 1956 and was engaged in the manufacture of Vanadium Pentoxide Catalyst and certain products ancillary thereto. It is contended that on account of recession in industry, resulting in a continuous decline in the orders by the customer companies and on account of facing accumulation of finished goods, the company found several workmen surplus to its requirement and consequently, it found the need to reduce the number of workmen and more particularly those from the helper category. Initially it had resorted to lay-off and subsequently decided to offer a voluntary retirement to all the workmen in the helper category. The voluntary retirement scheme did not receive sufficient response and, therefore, the original scheme was revised and even to this revised scheme there was no response. The Company claimed that on or about 20/4/1983 they

displayed a list of 43 helpers called as a Seniority List in accordance with Rule 81 of the Industrial Disputes (Bombay) Rules (hereinafter referred to as the Rules for short) and copies thereof were forwarded to all the specified authorities for their information. On 7/5/1983 it offered retrenchment notices to 19 out of 20 juniormost helpers including the present respondent no.1 informing them that they would stand retrenched with effect from 9th May, 1983. When the retrenchment letter, compensation and notice pay were offered to them on 7/5/1983, it is alleged that they refused to accept the same and, therefore, they were sent by post on 7/5/1983 itself under Registered Post A.D. along with a Postal Money Order. However, they were returned with the remark "refused" or "unclaimed, return to sender". It appears that out of these 20 retrenched helpers, majority of them did not raise any dispute and at least seven of them challenged the action of retrenchment by raising a dispute under Section 2A of the Industrial Disputes Act, 1947 (the Act for short). These disputes were ultimately referred for adjudication to the Labour Court at Thane under Section 10(4) of the Act. The details of these seven references before the Labour

Court are as under:-

(a) Reference (IDA) No.46 of 1987 - Banwari @ Banzaru Kukram Rajbhor.

(b) Reference (IDA) No. 48 of 1987 - D.P. Suryawanshi.

(c) Reference (IDA) No. 49 of 1987 - Ramprasad Sharma.

(d) Reference (IDA) No. 50 of 1987 - Hareshkumar Patel.

(e) Reference (IDA) No. 51 of 1987 - Vishwanath Shelke.

(f) Reference (IDA) No. 54 of 1987 - Laxman J. Shelke.

(g) Reference (IDA) No. 56 of 1987 - Rambali S. Yadav.

3. Reference (IDA) No. 50 of 1987 was dismissed for non prosecution on 20/4/1990. Reference (IDA) No. 46 of 1987 and Reference (IDA) No. 54 of 1987 were decided by the 1st Labour Court on 30/3/1996 and bother were allowed. Reference (IDA) No. 49 of 1987 was decided by the 4th Labour Court on 28/11/1997 and the Reference was rejected. Reference (IDA) Nos.48 of 1987, 51 of 1987 and 56 of 1987 came to be decided by the 1st Labour Court on 20/4/2000 and all of them were dismissed by upholding the action of retrenchment. The awards passed in Reference (IDA) Nos. 48, 49, 51 and 56 passed in favour of the Management were not challenged and it is the Management who challenged the award passed in Reference (IDA) No.46 of 1987 from which the present petition arises and Reference (IDA) No. 54 of 1987 in Writ Petition No. 3954 of 1996. The said petition came to be allowed by this court as per the Judgment and Order dated 24/8/2004 by recording a finding that the common evidence led in Reference (IDA) No. 48 of 1987 proved that the Management had displayed the Seniority List as required under Rule 81 of the Rules and the mandatory

provisions of Sections 25G of the I.D. Act were not violated. Mr.Singh the learned Senior Counsel has placed reliance on this judgment passed in Writ Petition No. 3954 of 1996 and has pointed out that in the six References made at the instance of similarly placed six retrenched workmen, including the present petitioner, four References came to be decided in favour of the Company, whereas two of them, one at the behest of the present respondent and the second of Shri Laxman Shelke were decided against the Company. He submitted that when common evidence was led in Reference (IDA) No.48 of 1987 and was circulated in all the References, the findings recorded in Reference (IDA) No.48 of 1987 were required to be accepted as binding and they have been so accepted while Reference (IDA) Nos. 49, 51 and 56 of 1987 were decided. As per Mr.Singh there cannot be two separate findings on the same issue by the Labour Court, even though the awards were passed by the different Presiding Officers.

4. As per Mr. Singh the mandatory requirements of Section 25G of the I.D. Act were complied with, Seniority List of the helper category workmen was

published as required under Rule 81 of the Rules and this court in the case of Chemical Mazdoor Sabha vs. M/s. Vital Organics Pvt. Ltd. and anr. **[1995 (2) Mh.L.J. 620]** has held that Rule 81 is directory and not mandatory. He also raised a serious grievance that in the statement of claim submitted by the workman in support of his demand, there was no pleading of breach of the requirements of Section 25G of the I.D. Act and, therefore, the Company had no occasion to deal with the same issue in its Written Statement. It was not permissible for the Labour Court while passing the impugned award to go beyond the pleadings of the parties and allowing the Reference on an issue which was not agitated. It was further claimed that the respondent - workman suppressed knowingly that he was employed and thus did not come before the court with clean hands. When a separate application was filed at Exh. C-8 by the Company, the workman replied and stated that he was not employed any where. However, when he was confronted in the cross examination, he admitted to have secured a watchman’s job. Under such circumstances, it was not permissible for the Labour Court to grant 10 years back wages and such an order

is without any justification, more so when the onus of proving that the workman was not employed during the intervening period fell on him alone. He also pointed out that in his cross-examination the workman admitted that he was not seeking reinstatement in employment and he was only interested in claiming backwages. This admission of the workman raises serious doubts about his bonafides and it was clear that he was all along employed gainfully and was satisfied with the salary he was earning. In support of these contentions Mr.Singh has relied upon the following decisions:-

1. Muir Mills Unit of NTC (U.P.) Ltd. vs. Swayam Prakash Srivastava and anr. [(2007) 1 SCC 491].

2. U.P. State Brassware Corpn. Ltd. and anr. vs. Uday Narain Pandey [(2006) 1 SCC 479].

5. Per contra, Mr. Pradhan has supported the impugned award and has pointed out that the Seniority

List at Exh.C-16 was submitted on 26/3/1996 i.e. after recording the evidence and, therefore, the said Seniority List was not proved by the oral evidence. The recording of evidence of the company's witness was completed on 13/2/1996. He has also pointed out that all other four References which were allowed in favour of the Company were decided subsequently and, therefore, the awards passed therein cannot be relied upon by the petitioner in support of its challenge to the award impugned in the present petition. He also pointed out that in all those four References i.e. 48/87, 49/87, 51/87 and 56/87 the Seniority List was placed on record and it was proved through the oral testimony of the company's witness and such was not the case in the instant petition. Mr.Pradhan submitted that the failure to publish the Seniority List, as required under Rule 81 of the Rules, is fatal because in the absence of such seniority list, there is no other evidence to examine the compliance of Section 25G of the I.D.Act. When a reference was made to the oral depositions of the company's witness Shri Navinchand Laxmichand Nagda, Mr.Pradhan submitted that the person who displayed the list on the notice board as claimed by Mr. Nagda CW-2 was not examined and in

addition the material in support of the Seniority List was not placed on record and failure to do so would vitiate the company's case. On the point of grant of backwages, Mr. Pradhan submitted that the onus of proving that the workman was gainfully employed squarely fell on the Management and the respondent-workman had not in any way suppressed regarding his employment which was recent and was on temporary basis. Once the action of termination of service is held to be illegal for whatever reasons, the order of backwages must follow, as per Mr. Pradhan, along with the order of reinstatement and in the instant case the workman had given up the claim of reinstatement and, therefore, the Labour Court confined its directions only to the issue of backwages for 10 years. In support of these contentions and opposing the petition, he has placed reliance on the following decisions:-

1. H.M.T. Limited vs. Labour Court, Ernakulam and ors. [(1994) 2 SCC 38].

2. U.P. SRTC Ltd. vs. Sarada Prasad Misra and anr. [(2006) 4 SCC 733].

3. G. Pandurang Kotmire vs. Kolhapur Janata Central Co-operative Consumers Stores Ltd. [1994 II CLR 1096].

6. In Reference (IDA) No. 49 of 1987 which was decided in favour of the Management on 28/11/1997 Mr. Nagda had filed his affidavit by way of examination-in-chief for the first time on 9/4/1997. It is thus clear from the records that after the impugned award was passed on 30/3/1996 the company took corrective steps to prove the Seniority List of helper category workmen and displayed under Rule 81 of the Rules before the impugned action of retrenchment with effect from 9/5/1983. However, Exh.C-16 in Reference (IDA) No.46/87 is an application submitted by the Management on 26/3/1996 to bring on record the Seniority List of the helper category workmen published under Rule 81 of the Rules and it was the basis of the action of retrenchment. The learned Judge of the Labour Court had called for the say from the learned Advocate appearing for the respondent. The say filed on 26/3/1996 on behalf of the workman opposing this production of Seniority List on record

reads as under:-

> "Received copy. Document not admitted as the matter is for arguments. The respondent is not able to verify the same. Hence this may be rejected."

. The learned Judge of the Labour Court overruled this say and passed the following order on 26/3/1996 itself on Exh.C-16:-

> "Allowed to place on record."

Thus, the application came to be exhibited as Exh.C-16. There is no exhibit marked by the Labour Court to the Seniority List as it was not proved in the oral depositions of any of the Company's witnesses, though it is a fact that the said Seniority List has been subsequently proved by the Management in Reference (IDA) No. 49 of 1987 and three other References decided on 20/4/2000. All these four awards have become final. This court in Writ Petition No. 3954 of 1996 relied upon the common evidence led

in Reference (IDA) No. 48 of 1987. The record shows that the recording of evidence in the said Reference had commenced on 7/6/1995 by examining Shri J. Shreedharan. The affidavit of Shri Nagda by way of examination-in-chief was filed on 9/4/1997 and his cross examination on the same was completed on 9/3/1999. Therefore, the evidence led in Reference (IDA) No.48 of 1987 cannot be relied upon in support of the Company's challenge to the impugned award.

7. Be that as it may, the main question that falls for consideration of this court is, whether the Management had violated the mandatory provisions of Section 25G of the I.D. Act while effecting retrenchment of the 20 helpers as per order dated 7/5/1983. It is true that such an issue was not raised in the statement of claim submitted by the respondent-workman and, therefore, Mr.Singh is justified in placing reliance on the decision of Chemical Mazdoor Sabha (Supra). However, the fact remains that the learned Judge of the Labour Court had framed issues at Exh.01 as per his order dated 7/7/1994 and the issues read as under:-

i. Does the party No.2 prove that his termination is illegal and against the provisions of law?

ii. Does the party No.1 prove that it has acted in accordance with the law and the termination so effected is legal and proper?

iii. If the action of the party No.1 is not legal and in accordance with the law, Does the party No.2 prove that, he is entitled to the relief claimed?

iv. What relief?

v. What order?

. Issue no. 2 reproduced hereinabove shifted the burden on the Company to prove that it had acted in accordance with law and the termination of service by way of retrenchment was legal and proper. This issue obviously included the mandatory compliance of Sections 25F and 25G of the I.D. Act and there was sufficient notice to the Company on 7/7/1994 itself

that it was required to prove its action of retrenchment to be legal. The Labour Court, on appreciation of the evidence, has held that Section 25F of the I.D. Act was complied with. On the issue of the compliance of Section 25G of the I.D. Act, the witness of the company Shri Nagda stated in his examination-in-chief that the Seniority List of 43 helpers was displayed on the notice board before the order of retrenchment was issued and the helpers from Sr.Nos.24 to 43 were retrenched. In the cross-examination nothing was asked to this witness as to whether any junior was retained and senior was retrenched. There was no question put to this witness by the defence as to whether any junior helper to the second party workman was retained in service while retrenching 20 helpers. On the other hand, the second party workman in his cross-examination admitted that Shri Laxman Shelke, Shri R.S. Yadav and Shri A.G. Shigwan were senior to him and they were retrenched and though he did not know the exact strength of helpers they were about 40 in numbers. In the Seniority List brought on record at Exh.C-16 Mr. L.J. Shelke appears at Sr.No.29, Mr.R.S. Yadav at Sr.No.30 and Mr. A.G. Shigwan at Sr.No.28 whereas the second

party workman appears at Sr.No.31. It is not the case of the defence that any of the helpers at Sr.Nos.1 to 23 who were retained, were junior to the second party workman. The petition filed by Mr. L.G. Shelke has been dismissed by this court. Section 25G of the I.D. Act lays down procedure for retrenchment and it states that where any workman in an industrial establishment is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman. Thus for specific reasons to be recorded, the normal rule of last come first go can be deviated in a given case. In this regard I may usefully refer to the following observations made by the Division Bench of this Court in the case of Nav Bharat Hindi Daily, Nagpur vs. Nav Bharat Shramik Sangha and anr. **[1985 ILLJ 474]**:

> ". Though the petitioner had not complied with Rule 81, it was even otherwise obligatory

> upon the petitioner to have at least complied with the Rule of "last come first go". A list purporting to be a seniority list was filed by the petitioners before the Tribunal at the last stage of evidence, alleged to have been prepared from documents available with them. The oral evidence of the petitioner was not accepted by the Industrial Tribunal in the face of contrary evidence on record....."

. Mr. Pradhan the learned counsel for the respondent-workman relied upon these observations and submitted that the seniority list submitted at Exh.C-16 was rightly not taken into consideration by the Labour Court as it was submitted towards the fag end of the trial.

8. The scheme of Rule 81 of the Rules is in paramateria with the scheme of Rule 77 of the Industrial Disputes (Central) Rules 1957. In the case of State Bank of Bikaner and Jaipur vs. Om Prakash Sharma **[(2006) 5 SCC 123]**, the issue of non compliance of Rule 77 of the Central Rules has been considered by the Apex Court and it would be appropriate to

reproduce the following observations made by their Lordships in para 11:-

> "11. By reason of the said rule, the employer has been enjoined with a duty to prepare a list of all workmen in the particular category from which retrenchment is contemplated. Such a list was not prepared. The consequence of non-maintenance of the said document has been provided in Rule 79 of the ID Rules, being imposition of penalty. In case of violation on the part of the management to comply with the statutory provisions, thus, it could have been subjected to penalty. Rule 77 may be mandatory in character as was urged by Mr. Calla, but, only because the appellant herein did not maintain the prescribed register, the same by itself would not mean that the respondent herein would be entitled to be reinstated in service with back wages without establishing that the provision of Section 25-H was violated...."

. In the Bombay Rules, Rule 89 is in paramateria with Rule 79 of the Central Rules and, therefore, Mr. Singh the learned Senior Counsel was right in his contentions that failure to maintain or publish the seniority list as required under Rule 81 of the Bombay Rules, per se, does not render the action of retrenchment void ab initio so long as the petitioner is able to point out that the rule of "last come first go" has been followed in compliance with the statutory requirements of Section 25G of the I.D. Act. In the case of Regional Manager, SBI vs. Rakesh Kumar Tewari **[(2006) 1 SCC 530]**, on the scheme of Section 25G of the Act, their Lordships made the following observations:-

> ". Section 25-G requires the employer to "ordinarily retrench the workman who was the last person to be employed in a particular category of workman unless for reasons to be recorded the employer retrenches any other workman". This "last come first go" rule predicates (1) that the workman retrenched belongs to a particular category; (2) that there was no agreement to the contrary; and

> (3) that the employer had not recorded any reasons for not following the principle. These are all questions of fact in respect of which evidence would have to be led, the onus to prove the first requirement being on the workman and the second and third requirements on the employer. Necessarily a fair opportunity of leading such evidence must be available to both parties. This would in turn entail laying of a foundation for the case in the pleadings. If the plea is not put forward, such an opportunity is denied, quite apart from the principle that no amount of evidence can be looked into unless such a plea is raised."

. On the basis of these observations made in the case of Regional Manager, SBI (Supra), Mr. Singh’s submissions that the Labour Court was not required to consider the issue of compliance of Section 25G of the I.D. Act as such a pleading was not set out in the statement of claim by the workman appeared to be impressive, but as noted earlier the Labour Court had framed issues and one of the issue was wither the

action of retrenchment was legal and this obviously implied the compliance of Section 25F as well as Section 25G of the I.D. Act. Therefore, the challenge to the order passed by the Labour Court on this issue is unsustainable in the facts of this case.

9. The next issue that is required to be considered is, whether the seniority list at Exh.C-16 which was allowed to be taken on record by the Labour Court should be taken into consideration to hold that even otherwise the requirements of Rule 81 of the Bombay Rules was complied with by the company. As I have noted earlier, the said list has been proved by the company in the connected references but after the impugned award was passed. In the ordinary course, there may be some justification for remand to the Labour Court for proving the said list by adducing oral evidence. But the same course of action need not be resorted to in the instant case for two reasons, (a) I have already held that the requirement of Section 25G of the I.D. Act has been complied with by the company and thus the rule of last come first go has been maintained and (b) with the passage of time remand is not advisable and more so when the very same

document has been subsequently proved by leading oral evidence in the connected references. I must also note that while allowing Writ Petition NO.3954 of 1996 this court (Mhatre,J.) has accepted the evidence recorded in Reference (IDA) No.48 of 1987 to prove the said seniority list submitted along with the application at Exh.C-16 in the present case. When the Labour Court in the connected references has in the subsequent awards held that the seniority list as required under Rule 81 of the Bombay Rules was displayed and the same was proved by leading oral evidence by the company, there is no reason to hold now that such a seniority list was never displayed by the company and it acted in breach of the requirements of Rule 81 of the Bombay Rules.

10. On the point of grant of backwages, the arguments advanced by Mr.Singh need not be considered when this court is satisfied that the first part of the impugned award regarding retrenchment being illegal is held to be unsustainable. If the action of retrenchment is found to be legal and in compliance with the provisions of Sections 25F and 25G of the I.D.Act and when it is held that the company had also

complied with Rule 81 of the Bombay Rules, the question of payment of backwages would not arise. Backwages have been granted as the Labour Court held that the action of retrenchment was illegal and it was, therefore, a consequential order on the main issue of legality of the retrenchment.

11. In the premises, this petition succeeds and the same is hereby allowed. The impugned award dated 30/3/1996 passed in Reference (IDA) No.46 of 1987 is hereby quashed and set aside and consequently the demand for reinstatement in service with full backwages and continuity of service stands rejected. Rule is made absolute accordingly with no order as to costs.

. The amount deposited by the petitioners pursuant to the order dated 5/2/1997 is allowed to be withdrawn by the petitioners with interest that may have accrued on the said amount.

(B.H. Marlapalle,J.)